IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE M.H.S. ANSARI**

**and**
**THE HON'BLE MR JUSTICE V.ESHWARAIAH**

**WRIT PETITION NO : 24177 of 2004**

Between:

M/s. Kirloskar Brothers Limited, P.B.No.1580, 310, Corporate Block, Jade Arcade, 126, M.G. Road (Near Paradise Circle), Secunderabad 500 003. Rep. by its Manager (Accounts) Sri G. Vijay Giri.

**..... PETITIONER**

AND

1 Commercial Tax Officer, R.P. Road Circle, Secunderabad.
2 Deputy Commissioner (CT), Secunderabad Division,

Hyderabad.
3 Additional Commissioner (CT)(Legal)(FAC), Andhra

Pradesh, Hyderabad.

**.....RESPONDENT(S)**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction particularly one in the nature of Writ of Mandamus granting stay of collection of

the disputed tax of Rs.7,32,964/- for the assessment year 1999-2000 arising in pursuance of the stay rejection orders of the third respondent dt. 09-11-2004 passed in CCT's Ref.No. LIII(1)/1783/2004 pending disposal of the appeals before the Sales Tax Appellate Tribunal or to pass such further or other orders

**Counsel for the Petitioner:MR.S.KRISHNA MURTHY**

**Counsel for the Respondent No.: GP FOR COMMERCIAL TAX**

**The Court made the following :**

**O R D E R (Per MHSA,J)**

Heard learned counsel for respective parties.

2 . Learned Standing Counsel for Commercial Tax made oral submissions.

3. What is questioned in the instant writ petition, is the order of 3rd respondent rejecting the application filed by the dealer seeking stay of collection of disputed tax of Rs.7,32,964/-, pending disposal of the

appeal filed before the learned Sales Tax Appellate Tribunal.

4. Though several contentions have been raised before us by the learned counsel for the petitioner, we are not inclined to go into the same for the reason that against the revisional proceedings, petitioner has filed an appeal before the Sales Tax Appellate Tribunal and thus has availed of the statutory remedy of appeal and can raise all such contentions before the said authority.

5. Mr. S.Krishna Murthy learned counsel for the petitioner however submitted that the aforesaid statements on merits were, with the view that no tax at all is payable by the petitioner and, therefore, impugned order passed by the 3rd respondent rejecting the stay application warrants interference by this Court.

6. However, keeping in view the usual orders that are being passed by this Court, we have also taken into consideration the contentions raised by Mr.S.Krishna Murthy learned counsel for the petitioner, as also the oral submissions made by the learned Standing Counsel for Commercial Tax.

7. Instead of keeping the writ petition pending on the file of this court, we are inclined to dispose of the same with directions as under:

“If the petitioner deposits 1/3rd of the disputed tax, the appeal before the learned Sales Tax Appellate Tribunal shall be disposed of on its own merits without insisting upon the petitioner to pay the balance of disputed tax.”

8. It is hereby clarified that the 1/3rd tax hereby directed to be paid by the petitioner, as condition precedent for hearing of the appeal, shall

be paid within a period of four weeks from date hereof.

9. It is hereby further clarified that the appeal before the Sales Tax Appellate Tribunal shall be disposed of on its own merits, uninfluenced by any observations made herein.

10. For the aforesaid reasons, the impugned order dated 9.11.2004 passed by the 3rd respondent is hereby stayed, subject to the petitioner complying with the directions as to deposit, as above.

11. Writ petition accordingly stands disposed of. No costs.

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M.H.S.ANSARI, J

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DATE:28.12.04 V.ESHWARAIAH, J

Note: CC on priority basis.

To

1 Commercial Tax Officer, R.P. Road Circle, Secunderabad.
2 Deputy Commissioner (CT), Secunderabad Division, Hyderabad.
3 Additional Commissioner (CT)(Legal)(FAC), Andhra Pradesh, Hyderabad.
4. Two C.Cs. to G.P. for Commercial Tax, High Court of A.P., Building, Hyderabad (O.U.T.)

5. Two C.D. copies.